

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MCKESSON AUTOMATION INC.,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 06-28-SLR
)	
TRANSLOGIC CORPORATION and)	
SWISSLOG ITALIA S.P.A.,)	
)	
Defendants.)	

MEMORANDUM ORDER

At Wilmington this 1st day of March, 2011, having reviewed the various motions in limine filed within the proposed pretrial order (D.I. 597, exs. 12, 14);¹

IT IS ORDERED that:

1. Plaintiff's motions numbered 1, 2, 4, 5, 6 and 8 are denied as moot, as they simply reiterate the court's standard practice of limiting litigants to the scope of their experts' reports and limiting trial to the scope delineated by the court's prior orders.

2. Plaintiff's motion numbered 3 shall be reviewed again after plaintiff has offered its evidence (if any) on secondary considerations of non-obviousness.

3. Plaintiff's motion numbered 7 is granted in part (past or present litigation), denied in part (as to other McKesson entities), and stayed (comparison of the RobotRx and PillPick systems) pending plaintiff's evidence (if any) on secondary considerations

¹The court notes that the motions in limine at bar were allowed by Judge Stark, to whom this case was previously referred for all purposes through the pretrial conference.

of non-obviousness.

4. Defendants' motion numbered 1 is granted to the extent that plaintiff is precluded from proffering any evidence of copying except in the context of secondary considerations of non-obviousness. The legal opinions of Provvisionato & Co. are not relevant to the issue of copying.

5. Although opinions of counsel are relevant to the issue of an intent to induce infringement, *see Broadcom Corp. v. Qualcomm Inc.*, 543 F.3d 683, 699 (Fed. Cir. 2008), given the parties' dispute about whether plaintiff properly vetted and preserved the issue of inducement, the court will reserve the decision on defendants' motion numbered 2 until plaintiff makes a proffer about the issue of inducement.

6. Defendants' motion numbered 3 is granted conditionally; plaintiff, however, may make application for the admission of specific exhibits to be decided on a case-by-case basis.

7. The order of proof shall be as follows, absent agreement by the parties:
- a. Plaintiff presents its case in chief on infringement.
 - b. Defendants present evidence of non-infringement and present their case in chief on invalidity.
 - c. Plaintiff responds to defendants' evidence of non-infringement and of invalidity, and presents its evidence on secondary considerations of non-obviousness.
 - d. Defendants respond to plaintiff's evidence on invalidity, including secondary considerations of non-obviousness.
 - e. Plaintiff responds to defendants' evidence on secondary

considerations of non-obviousness.


United States District Judge